

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-02-TC-053
)	CUID No. CA1441 (Montrose)
Marcus Cable Associates, LP)	
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION**Adopted: August 6, 2002****Released: August 8, 2002**By the Chief, Enforcement Bureau:¹

1. In this Order we consider a petition for reconsideration ("Petition") of Order, DA 99-377² ("Second Order"), filed with the Federal Communications Commission ("Commission"). The Second Order resolved a complaint against the June 1, 1998 rate increase by the above-referenced operator ("Operator")³ for its cable programming services tier ("CPST") in the community referenced above. It also resolved a petition for reconsideration of Order, DA 97-2648 ("First Order").⁴ In this Order, we grant Operator's Petition, amend the Second Order and calculate Operator's refund liability.

2. Under the provisions of the Communications Act⁵ that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁶ and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁷ and the Commission's rules implementing the legislation ("Interim Rules"),⁸ require that a complaint against the CPST rate be filed with

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² *In the Matter of Marcus Cable Associates, LP*, DA 99-377, 14 FCC Rcd 3390 (CSB 1999).

³ The term "Operator" includes Operator's predecessors and successors in interest.

⁴ *In the Matter of Marcus Cable Associates, LP*, DA 97-2648, 12 FCC Rcd 21970 (CSB 1997).

⁵ 47 U.S.C. §543(c) (1996).

⁶ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁷ Pub. L. No. 104-104, 110 Stat. 56 (1996).

the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁹ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.¹⁰

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹¹ Cable operators may justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation, by filing FCC Form 1210.¹² Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹³ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁴ Additionally, an Operator may file an FCC Form 1235, which allows cable operators to justify rate increases related to significant capital expenditures used to improve rate-regulated services. This option is extended only in cases of significant upgrades requiring added capital investment, such as bandwidth capacity and conversion to fiber optics, and for system rebuilds. Normal improvements and expansions of service remain subject to the usual rate adjustments allowed by filing FCC Form 1210s, 1220s, and 1240s. Cable operators that incur increases in operating costs associated with a significant network upgrade will be permitted to charge additional rates as justified by their FCC Form 1235 filings.

4. In the Second Order, the Cable Services Bureau reduced Operator's FCC Form 1235 maximum permitted rate ("MPR") from \$3.95 to \$3.60, based on a previous Cable Service Bureau decision concerning Operator's FCC Form 1235.¹⁵ In that previous decision, the Cable Services Bureau adjusted Operator's FCC Form 1235 subscriber count because the subscriber count reflected the number of subscribers that existed ten months after the completion of the upgrade.¹⁶ In its Petition, Operator requests that it be allowed to use the subscriber count that existed as of the date of the completion of Operator's upgrade, when Operator's final costs were known and Operator calculated its final FCC Form 1235 MPR. Operator attached an amended FCC Form 1235 to its Petition, using this subscriber count and calculating an MPR of \$3.95, the same MPR that Operator requested with its initial response to the

⁸ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

⁹ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

¹⁰ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

¹¹ See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Second Order at n. 18, citing *Marcus Cable Associates, LP*, DA 98-2308, 13 FCC Rcd 22314 (CSB 1998) ("Form 1235 Order").

¹⁶ Form 1235 Order at ¶ 6, n. 15.

complaint. We find Operator's request to be reasonable and consistent with the FCC Form 1235 Instructions.¹⁷ Therefore, we grant Operator's Petition.

5. Operator did not submit a refund plan in response to the Second Order. Therefore, we calculate Operator's refund liability as follows: For the period from March 1, 1998 through May 31, 1998,¹⁸ we calculate an overcharge of \$1.98 per month per subscriber. Operator's actual CPST rate for this period was \$19.50 and its MPR was \$17.52 (\$13.57 plus \$3.95). For the period June 1, 1998 through March 31, 1999, we calculate an overcharge of \$2.30 per month per subscriber. Operator's actual CPST rate for this period was \$21.34 and its MPR was \$19.04 (\$15.09 plus \$3.95). Our total calculation, including interest on the overcharges through September 30, 2002, equals \$55,435.00. Our calculation does not include franchise fees. We order Operator to refund this amount, plus any additional interest accrued to the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount, to its CPST subscribers within 60 days of the release of this Order.

6. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. §1.106, that Operator's petition for reconsideration IS GRANTED and *In the Matter of Marcus Cable Associates, LP*, DA 99-377, 14 FCC Rcd 3390 (CSB 1999) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

7. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$55,435.00, plus any additional interest accruing between September 30, 2002 and the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount within 60 days of the release of this Order.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁷ See FCC Form 1235 Instructions at p. 8, requiring that the subscriber count reflect the number of subscribers at the time of filing - for a final FCC Form 1235, this would be at the completion of the upgrade.

¹⁸ This time period was not included in the true-up portion of Operator's FCC Form 1240 for the projected period beginning June 1, 1998, which the Cable Services Bureau reviewed in the Second Order. See Second Order at n. 16.